

REMARKS

This Amendment is responsive to the Office Action dated October 2, 2009. Applicants have amended claims 1, 3-10, 22, and 24. Claims 2, 11-21, 23, 25 and 28-31 are canceled. Claims 1, 3-10, 22, 24, 26, and 27 are pending.

Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 1-31 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claims 1, 3-10, 22, and 24. Applicants submit that both the independent and dependent claims, as amended, particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. § 112, second paragraph. Applicants request withdrawal of all rejections under 35 U.S.C. § 112, second paragraph.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claim(s) 1, 7, 11, 13-14 and 22-24 under 35 U.S.C. § 102(b) as being anticipated by Saper et al. (US 3,865,101, hereafter "Saper"). Applicants respectfully traverse the rejection to the extent such rejection may be considered applicable to the amended claims. Saper fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(b).

For example, Saper fails to disclose each and every element of claim 1. Among other elements, amended claim 1 requires "a power supply sharing link between the base and the pod, wherein the base is configured to provide power to charge the pod battery via the power sharing link and the pod is operable to collect patient data without receiving power from the base."

In the Office Action rejecting claim 1, the Examiner cited col. 3, lines 46-52 (including elements 34-36) of Saper as purportedly disclosing "a power supply sharing link between the base and the pod." The Examiner also cited Fig. 3, col. 3, lines 1-23, and Col. 1, lines 44-57 of Saper as purportedly disclosing "wherein the pod can receive power from the base via the link, but is operable to collect patient data without receiving power from the base."¹ Applicants disagree with this characterization of Saper, particularly to the extent that the characterization

¹ Office Action dated 10/02/09, at paragraph 2.

may be applied to claim 1 as amended. The description of Fig. 3 in Saper begins at col. 2, lines 34-39, which is reproduced below:

FIG. 3 shows in schematic, functional form the configuration required to allow the monitor unit to operate on its own power supply when removed from the monitor-defibrillator combination and then to operate on its own supply when it is replaced in its compartment 16 within the console 14.

As indicated by this introductory passage of Saper, Fig. 3 and the related disclosure in columns 3 and 4 is directed toward a monitor unit that operates on its own power supply when removed from the monitor-defibrillator combination *and* when it is within the console. In either configuration, the monitor is using its own battery power. This arrangement is highlighted further in the operational description of Saper at col. 3, lines 34-45, which describes power supply when the monitor is in the console:

'With the switch in this position, the only path by which electrical power supplied by batteries 18 and 20 can reach the monitor circuits 37 is via the electrical connections to the female connector 34, through the interface connector 34-36, then via the connections to the console switch. With the console switch 38 in the "OFF" position power would be interrupted to the monitor unit. By positioning the console switch in either the Monitor Only position or the ON position power is distributed by switch 38 to the leads returning to the interface connector from where it is then routed to the monitor circuits 37.

This passage indicates that electrical power is supplied through the interface connectors 34-36 *by batteries 18 and 20*, which are described at col.2, line 40 of Saper as being internal to the monitor unit. In all sections cited by the Office Action, the monitor batteries of Saper provide power to the monitor; the batteries do not receive power from the console.

A rejection under § 102(b) requires that a single reference expressly or inherently disclose each and every element of a claim. The Saper reference fails this standard for at least the reasons given above. Specifically, the Office Action fails to show that the device in Saper discloses or suggests "a power supply sharing link between the base and the pod, wherein the base is configured to provide power to charge the pod battery via the power sharing link and the pod is operable to collect patient data without receiving power from the base," as required by

amended claim 1. Accordingly, a section 102(b) rejection of amended claim 1 is improper. Applicants respectfully request withdrawal of the rejection.

Independent claims 7 and 22, though differing in scope from claim 1, include elements similar to the elements in independent claim 1. Accordingly, claims 7 and 22 are novel over the Saper reference for at least the reasons given above with respect to independent claim 1 as well as upon other patentable features and elements claimed in claims 7 and 22 but not explicitly discussed herein.

Claim 24 depends from independent claim 22 and adds additional features and elements to the already patentable features and elements of claim 22. Accordingly, claim 24 is novel over the Saper reference for at least the reasons given above with respect to independent claim 22.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 2-6, 8-10, 17 and 25-31 under 35 U.S.C. § 103(a) as being unpatentable over Saper in view of Fincke et al (US 5,470,343, hereafter "Fincke"). Applicants respectfully traverse the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicants' claims, and there is no apparent reason for further modification to arrive at the claimed invention.

Saper and Fincke Combination

The Office Action rejected claims 2-6, 8-10, 17, and 25-31 as being unpatentable over Saper in view of Fincke. Applicants traverse the rejection to the extent that it may be applied to any of the amended claims.

There would have been no motivation to combine Saper and Fincke as suggested by the Examiner. Saper is directed toward a "separable unit containing heart monitor and defibrillator portions."² Fincke is directed toward "[a] detachable power supply for supplying power from an external power source to a portable defibrillator for charging a battery of the portable defibrillator and operating the portable defibrillator."³ Fincke does not have a separable unit that a defibrillator can power and the disclosure is inapplicable to Saper. To further illustrate this

² Saper, Abstract.

³ Fincke, Abstract.

point, in Fincke, “the invention features a detachable power supply for supplying power from an external power source to a portable defibrillator for charging a battery of the portable defibrillation and operating the portable defibrillation.”⁴ Operating the portable defibrillator is a critical function, and one of ordinary skill would have consciously avoided modifying Fincke to withdraw power for additional equipment. As a result, there would have been no motivation to combine and modify Saper and Fincke as suggested in the Office Action.

Moreover, even if the Saper and Fincke references were combined as suggested by the Examiner, the combination would not have led to the claimed inventions. Indeed, using the Examiner’s own characterization of the Saper and Fincke references, a characterization Applicants do not necessarily concede, the disclosures do not lead to the combination suggested by the Examiner. For instance, the Examiner reads Saper as disclosing a device that can “draw[] power from the monitor pod’s battery through the share link to operate the defibrillator and monitor functions.”⁵ The flow of power in this configuration would be from the monitor to the defibrillator. The Examiner then suggests that “Fincke et al. teaches that it is known to use a base connected to a docking station or power supply module able to be housed in the external defibrillator base . . . and provides a charging power supply to the AED system’s batteries in order to charge any batteries detected as being at low power”⁶ The flow of power in this configuration is from the power supply module to the defibrillator. Regardless of whether the references are looked at alone or in combination, power is flowing to the defibrillator, not from the defibrillator. As a result, the Office Action fails to show a combination of Saper and Fincke discloses or suggests “a power supply sharing link between the base and the pod, wherein the base is configured to provide power to charge the pod battery via the power sharing link and the pod is operable to collect patient data without receiving power from the base,” as required by amended claim 1.

Accordingly, Saper and Fincke, taken alone or in combination, do not disclose or suggest each and every limitation of Applicants’ claims. In the rejection of claims 2-6, 8-10, 17, and 25-31, the Office Action acknowledged that Saper failed to disclose “wherein the provided power charges the battery with the pod.”⁷ The Office Action asserted, however, that “Fincke et al.

⁴ *Id.* at col. 2, lines 25-29.

⁵ Office Action dated 10/02/2009, at page 4.

⁶ *Id.* at page 5.

⁷ Office Action dated 10/02/2009, at paragraph 5.

teaches that it is known to use a base connected to a docking station or power supply module ***able to be housed in the external defibrillator base*** that indicates battery levels . . . and ***provides a charging power supply*** to the AED system's batteries" Applicants dispute this mischaracterization of the Fincke reference. As described in Fincke, "[t]he power supply includes a ***housing shaped to attach*** to the defibrillator, and a latch connected to the housing for mechanically attaching the power supply" ⁸ The power supply of Fincke is further described in column 2, lines 51-58, which are presented below:

Finally, the power supply includes an external power connection, typically a cord, for bringing external power into the power supply and a power module installed within the housing and having a power circuit that converts power from the external power source to a form useable by the portable defibrillator. The output of the power module is connected to the electrical connector to deliver power to the defibrillator.

As illustrated above, the power supply includes a housing and an external power connection, typically a cord. It is unclear to Applicants how the Office Action concluded that "[i]t would have been obvious . . . to modify the system as taught by Saper et al., with a ***means within the base that provides power*** . . . as taught by Fincke et al." ⁹ The Office Action fails to show how a power supply that can attach to a defibrillator and supply power "from an external power source" ¹⁰ discloses or suggests "means within the base that provides power." For at least these reasons, the Office Action does not show how Saper and Fincke, either alone or in combination, disclose or suggest "a power supply sharing link between the base and the pod, wherein the base is configured to provide power to charge the pod battery via the power sharing link and the pod is operable to collect patient data without receiving power from the base" as recited by amended claim 1.

Independent claims 7 and 22, though differing in scope from claim 1, include elements similar to the elements in independent claim 1. Accordingly, claims 7 and 22 are non-obvious over the Saper and Fincke combination for at least the reasons given above with respect to independent claim 1 as well as upon other patentable features and elements claimed in claims 7 and 22 but not explicitly discussed herein. Claims 3-6, 8-10, 24, 26, and 27 inherit features of independent claims 1, 7, and 22, and are patentable over the Saper and Fincke combination for at

⁸ Fincke, col.2, lines 29-31 (emphasis added).

⁹ *Id.* (emphasis added).

¹⁰ *Id.* Abstract.

least the reasons given for independent claims 1, 7, and 22 as well as upon additional features and elements claimed in the dependent claims but not explicitly discussed herein.

For example, regarding claims 6 and 10, the Office Action asserted that “Saper et al. in view of Fincke et al. discloses the claimed invention except for wherein the power supply of the base providing charging is another battery.”¹¹ The Office Action then drew a conclusion of obviousness by asserting that “[r]eplacement of a wall supplied AC source with a portable source for charging discharged units was known and an obvious substitution to the method in Fincke et al.”¹² Applicants disagree with this unsupported assertion. The Office Action failed to point to disclosure in either Saper or Fincke that suggests modifying a defibrillator “with a portable source for charging discharged units.” Fincke already proposes a solution for battery charging, and the modification suggested in the Office Action is an advance beyond the disclosures of either reference. Indeed, such a modification would mandate a redesign of both the Saper and Fincke defibrillators. Accordingly, the Office Action failed to establish a *prima facie* case of obviousness for the claims 6 and 10.

Regarding claims 26 and 27, the Office Action asserted that “sleep modes due to inactivity and signals that digitally cause an off state as opposed to a mechanical switching means are both well known within the art.”¹³ The Office Action then concluded that it would be obvious to modify Saper with either digital signaling means or a sleep mode detection means. Applicants also disagree with this unsupported assertion. The Office Action failed to point to disclosure in either Saper or Fincke that identifies or suggests the modifications proposed in the Office Action. In fact, the hardware and analog circuitry of Saper, as illustrated in Figs. 3 and 4 of Saper, would require a complete redesign to implement the features suggested by the Examiner. As a result, the Office Action also failed to establish a *prima facie* case of obviousness with respect to claims 26 and 27.

For at least the reason provided above, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicants’ claims over Saper in view of Fincke under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

¹¹ Office Action dated 10/02/2009, at page 6.

¹² *Id.*

¹³ *Id.*

Palmer and Fincke Combination

The Office Action rejected claims 1-14, 17-21, and 28-31 as being unpatentable over Palmer in view of Fincke. Applicants traverse the rejection to the extent that it may be applied to any of the amended claims.

Applicants initially reiterate the comments offered above with respect to the mischaracterization of the Fincke reference. What's more, the combination proposed by the Examiner is incompatible with the disclosures of Palmer and Fincke. In the rejection of the claims, the Office Action concluded that "[i]t would have been obvious . . . to modify the system taught by Palmer et al., with a means within the base that provides power to the battery of the monitor pod to recharge the batteries . . . as taught by Fincke et al."¹⁴ Yet Palmer is directed toward a method that "includes the steps of determining a battery reserve capacity with the patient monitoring unit and distributing power *from* the patient monitoring system *to* a defibrillator . . ."¹⁵ The power distribution methods of Palmer are described in greater detail at paragraph [0035], which is presented below:

[0035] In general, the defibrillator 14 uses power from the attached monitor 12 in preference to its own power to the greatest extent possible in order to conserve the energy within its own battery 28. Power from the monitor may be used to perform all defibrillator functions other than charging the shock capacitor 27. These functions include (but are not limited to) powering the processor, user interface, pacemaker, and battery charger 82. The pulse generator 29 under control of the CPU 56 functions to raise a voltage of a power supply main 88 to an appropriate level for pacing, cardioversion, etc.

As illustrated above, the defibrillator uses power from the monitor "to the greatest extent possible." In this configuration, the flow of power is from monitor to the defibrillator. The power flow in the Fincke device, as discussed above, is from the power supply module to defibrillator. Regardless of whether the references are looked at alone or in combination, power is flowing to the defibrillator, not from the defibrillator. Consequently, the Office Action failed to show "a power supply sharing link between the base and the pod, wherein the base is configured to provide power to charge the pod battery via the power sharing link and the pod is operable to collect patient data without receiving power from the base," as recited by amended claim 1.

¹⁴ Office Action dated 10/02/2009, at page 8.

¹⁵ Palmer, Abstract.

The combination of Fincke and Palmer, as suggested in the Office Action, is also deficient because it would render the method and apparatus of Palmer inoperable. The Palmer reference already provides a method and apparatus “for distributing power within a cardiac treatment and monitoring system which include a defibrillator releasably coupled to a patient monitoring unit.”¹⁶ In this method, the “*monitoring unit may be used to supply power to the defibrillator*” when it is operating on AC mains power, and also when operating on battery power if the monitor is equipped with an equal or greater number of user-exchangeable battery packs.”¹⁷ One of ordinary skill in the art with both Fincke and Palmer in hand would need to disregard all of Palmer to “modify the system as taught by Palmer et al., with a means with the base that provides power to the battery of the monitor,” as suggested in the Office Action.¹⁸ Not only would the modification reverse the direction of power flow in Palmer, but Palmer already provides power options in the form of AC mains power or user-exchangeable battery packs. Because of the Palmer and Fincke combination is deficient as discussed above, the Office Action failed to establish a prima facie case of obviousness with respect to at least claim 1, which recites, among other elements, “a power supply sharing link between the base and the pod, wherein the base is configured to provide power to charge the pod battery via the power sharing link and the pod is operable to collect patient data without receiving power from the base.” Applicants respectfully request withdrawal of the rejection.

Independent claims 7 and 22, though differing in scope from claim 1, include elements similar to the elements in independent claim 1. Accordingly, claims 7 and 22 are non-obvious over the Palmer and Fincke combination for at least the reasons given above with respect to independent claim 1 as well as upon other patentable features and elements claimed in claims 7 and 22 but not explicitly discussed herein. Claims 3-6, 8-10, 24, 26, and 27 inherit features of independent claims 1, 7, and 22, and are patentable over the Palmer and Fincke combination for at least the reasons given for independent claims 1, 7, and 22 as well as upon additional features and elements claimed in the dependent claims but not explicitly discussed herein.

¹⁶ Palmer, paragraph [0006].

¹⁷ *Id.* (emphasis added)

¹⁸ Office Action dated 10/02/09, at page 8.

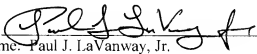
Additional Rejections

Claims 2, 11-21, 23, 25 and 28-31 are presently canceled. While not acceding to the further rejections in the Office Action dated October 2, 2009, Applicants respectfully submit that the rejections are rendered moot based on the cancellations and amendments to the claims. Withdrawal of the rejections is requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicants respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: January 4, 2010
SHUMAKER & SIEFFERT, P.A.
1625 Radio Drive, Suite 300
Woodbury, Minnesota 55125
Telephone: 651.735.8386
Facsimile: 651.735.1102

By: 
Name: Paul J. LaVanway, Jr.
Reg. No.: 64,610